

Message Text

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ORIGIN OPIC-12

INFO OCT-01 EA-11 ISO-00 EB-11 L-03 AID-20 TRSE-00 COME-00

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66619

DRAFTED BY OPIC/GC:SFRANKLIN:CJS

APPROVED BY EB/IFD/OIA:MKENNEDY

OPIC/T:LNIELSON

OPIC/GC:CHUNT

OPIC/EVP:DGREGG

OPIC/T:FJMULLER

EB/IFD/OIA:TBRODERICK

EA/TB:JKLEMSTINE

----- 002810

P 122142Z JUN 74

FM SECSTATE WASHDC

TO AMEMBASSY BANGKOK PRIORITY

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E.O. 11652: N/A

TAGS: EFIN,ID

SUBJECT: CALABRIAN (THAILAND) LTD. - LIQUIDATION

1. OPIC PROPOSES FOLLOWING SCHEDULE FOR LIQUIDATION:

A. ASAP CALTHAI SHAREHOLDERS VOTE TO DISSOLVE UNDER SECTION 1236 (4) OF THAI CIVIL AND COMMERCIAL CODE (THE "CODE"), APPOINTING DIRECTORS MCDONALD AND WALLS AS LIQUIDATORS UNDER SECTION 1251 OF CODE.

B. ORDINARY PROCEDURE FOR VOLUNTARY DISSOLUTION SHOULD CONTINUE WHILE OPIC NEGOTIATES WITH A&S STEEL RE TECHNICAL SERVICES FEES. IN EVENT AGREEMENT REACHED, OPIC BELIEVES BANKRUPTCY PROCEEDINGS MAY BE AVOIDED BY ASSIGNMENT OF ALL CALTHAI ASSETS TO OPIC IN LIEU OF DEBT. OPIC WILL DRAFT ASSIGNMENT FOR WIPHAT COMMENT. IN EVENT NO AGREEMENT IS REACHED WITH A&S, OPIC WILL

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ADVISE CALTHAI, LIQUIDATORS APPARENTLY WOULD THEN BE REQUIRED

TO FILE FOR BANKRUPTCY PER SECTION 1266 OF THE CODE BECAUSE THE ASSETS WOULD NOT BE SUFFICIENT TO SATISFY ALL THE CREDITORS. IT IS POSSIBLE THAT A&S STEEL, HOWEVER, MAY NEITHER ASSIGN ITS CLAIM TO OPIC OR FILE IT IN THAILAND. PLEASE ASK WIPHAT OF POTENTIAL CONSEQUENCES IF CALTHAI DISSOLVED WITHOUT RESOLUTION OF A&S CLAIM, PARTICULARLY IN LIGHT OF THE STATUTE OF LIMITATIONS.

2. PLEASE ALSO INQUIRE TO WIPHAT DEGREE TO WHICH AVOIDING BANKRUPTCY PROCEEDINGS CAN EXPEDITE LIQUIDATION. MEMO PREPARED BY KIRKWOOD IN 1969 SUGGESTS A MINIMUM TIME VIA BANKRUPTCY WOULD BE 6 - 9 MONTHS. IT THUS APPEARS THAT VOLUNTARY DISSOLUTION COULD SAVE PERHAPS 6 MONTHS IN TIME.

3. CALTHAI SHOULD IMMEDIATELY DELIVER FOLLOWING STATEMENT OF INDEBTEDNESS TO OPIC, IN LETTER FORM: QUOTE

OVERSEAS PRIVATE INVESTMENT CORPORATION
WASHINGTON,D.C. 20527
UNITED STATES OF AMERICA

GENTLEMEN:

CONSISTENT WITH YOUR LETTER TO TURGUAND YOUNG & COMPANY DATED APRIL 24, 1974, AND OUR LETTER TO MR. CECIL HUNT DATED MAY 1, 1974, WE HEREBY CONFIRM AND ACKNOWLEDGE THAT THE CALABRIAN (THAILAND) CO. LTD. ("CALTHAI"), IS INDEBTED TO THE OVERSEAS PRIVATE INVESTMENT CORPORATION ("OPIC"), THE LAWFUL SUCCESSOR TO THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT ("AID") AS FOLLOWS (AGREEMENTS AND NOTES REFERRED TO HEREIN ARE INCORPORATED HEREIN BY SUCH REFERENCE):

1. ON NOTES ISSUED UNDER THE AGREEMENT DATED JUNE 19, 1968 (THE "LOAN AGREEMENT") BETWEEN CALTHAI, THE BANK OF AMERICA, BANKERS LIFE COMPANY, FIDELITY MUTUAL LIFE INSURANCE COMPANY, THE BANK OF AMERICA, AS AGENT:

A. PRINCIPAL.....US \$1,600,000
B. INTEREST PAID BY AID..... 91,462.51
C. INTEREST ACCRUED AND UNPAID
AS OF MARCH 31, 1974..... 523,462.51
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TOTAL US 2,214,925.02

2. ON NOTES ISSUED UNDER THE AGREEMENT DATED AS OF JUNE 19, 1968 (THE "AMENDATORY AGREEMENT") BY AND BETWEEN CALTHAI AND THE CHEMICAL BANK NEW YORK TRUST COMPANY:

A. PRINCIPAL.....US \$3,000,000
B. INTEREST PAID BY AID..... 177,020.41

C. INTEREST ACCRUED AND UNPAID

AS OF MARCH 31, 1974..... 971.999.98

TOTAL: US \$4,149,020.39

3. ON AID LOANS TO COMPLETE CALTHAI FACILITIES:

A. NOTE OF NOVEMBER 14, 1968

(1) PRINCIPAL..... \$278,680.60

(2) INTEREST ACCRUED AND UNPAID

INTEREST AS OF MARCH 31, 1974 89,967.35

TOTAL US \$368,647.95

B. NOTE OF MAY 20, 1969

(1) PRINCIPAL.....US \$65,932.64

(2) INTEREST ACCRUED AND UNPAID

AS OF MARCH 31, 1974..... 15,010.67

TOTAL US \$80,943.31

4. ON OPIC WORKING CAPITAL LOANS:

A. NOTE OF AUGUST 30, 1971

(1) PRINCIPAL..... US \$25,000.00

(2) INTEREST ACCRUED AND UNPAID AS

OF MARCH 31, 1974..... 3,875.00

TOTAL US \$28,875.00

B. NOTE OF JANUARY 7, 1972

(1) PRINCIPAL.....US \$15,590.00

(2) INTERST ACCURED AND UNPAID

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AS OF MARCH 31, 1974..... 2,086.46

TOTAL US \$17,676.46

C. NOTE OF JUNE 31, 1972

(1) PRINCIPAL.....US \$15,000

(2) INTEREST ACCRUED AND UNPAID

AS OF MARCH 31, 1974..... 1,500

TOTAL US \$16,500

TOTAL AS OF MARCH 31, 1974...US \$6,876,588.13

CONSISTENT WITH OUR LETTER OF MAY 1, 1974, WE HEREBY REQUEST
THAT THE NOTE OF CALTHAI TO A.I.D. DATED JANUARY 18, 1971 IN
THE AMOUNT OF US \$9,603.84 BE CANCELLED AND RETURNED TO CALTHAI
BECAUSE THE EXPENSES FOR WHICH THE NOTE

WAS GIVEN WERE PROPERLY PAID BY AID WITHOUT RECOURSE TO CALTHAI FOR REIMBURSEMENT. IN ADDITION, WE REQUEST THAT THE CALIM OF BAHT 31,005 AGAINST THE CHEMICAL BANK NEW YORK TRUST CO., WHICH CALTHAI QUITCLAIMED TO OPIC BY THE LETTER OF MAY 1, 1974 BE CREDITED AGAINST THE AMOUNT DUE TO OPIC FOR INTEREST ALREADY PAID BY OPIC ON NOTES ISSUED TO SAID CHEMICAL BANK UNDER THE AMENDATORY AGREEMENT.

IN PROVIDING THIS STATEMENT OF INDEBTEDNESS, CALTHAI FURTHER ACKNOWLEDGES THAT OPIC HAS, AT THE REQUEST OF CALTHAI, REFRAINED FROM TAKING ANY LEGAL ACTION TO COLLECT THE AMOUNTS DUE TO OPIC FROM CALTHAI. SUCH FORBEARANCE HAS PERMITTED CALTHAI, TO BENEFIT OF ALL OF THE CREDITORS OF CALTHAI, TO SELL ITS ASSETS FOR THE BEST PRICE AVAILABLE UNDER THE CIRCUMSTANCES. ACCORDINGLY, CALTHAI HEREBY RENEWS ITS PROMISES REPAY TO OPIC THE AMOUNT OF CALTHAI'S INDEBTEDNESS TO OPIC.

IF YOU CONCUR THAT THIS STATEMENT OF INDEBTEDNESS IS CORRECT, AND IF YOU AGREE TO THE DISPOSITION OF THE NOTE OF JANUARY 18, 1971 AND THE CALIM OF BAHT 31,005 AS PROVIDED HEREIN, PLEASE SIGN THIS LETTER IN THE SPACE PROVIDED BELOW, AND RETURN A SIGNED COPY OF THIS LETTER TO US.

SINCERELY YOURS,
CALABRIAN (THAILAND) CO.,LTD

BY

WILLIAM F. MCDONALD
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CHAIRMAN, BOARD OF
DIRECTORS
DONALD F. WALLS
DIRECTOR

AGREED:

OVERSEAS PRIVATE INVESTMENT CORPORATION

BY

ITS

UNQUOTE

4. USAID MISSION DIRECTOR, REGIONAL LEGAL ADVISOR, OR THE DESIGNEE OF EITHER HEREBY AUTHORIZED TO SIGN FOREGOING LETTER ON BEHALF OF OPIC.

5. BEGIN LIMITED OFFICIAL USE.

NOTWITHSTANDING BELIEF THAT OPIC WILL WIN THE LAW SUIT,
CERTAIN STEPS SHOULD BE TAKEN TO GUARD AS BEST POSSIBLE AGAINST
POTENTIALLY ADVERSE CONSEQUENCES SHOULD COURT OF FIRST INSTANCE
RULE IN FAVOR OF COLQIANDRO. RATIONALE FOR IMMEDIATE PAYMENT
TO OPIC REFERRED TO IN STATE 122319 PARTIALLY BASED ON SUCH
CAUTION. LIKEWISE CURRENT STATEMENT OF INDEBTEDNESS DESIGNED
TO STRENGTHEN OPIC'S POSITION AGAINST ANY DEFENSE ON THE DEBT
BASED ON STATUTE OF LIMITATIONS. FINALLY, RLA SHOULD BE PREPARED,
IN THE EVENT OF AN ADVERSE JUDGEMENT, TO QUICKLY INITIATE
BANKRUPTCY ACTION AND FREEZE ASSETS. OPIC THUS BELIEVES
BEST APPROACH IS TO HAVE CALTHAI VOTE DISSOLUTION PRIOR
TO DATE JUDGMENT ANNOUNCED. IF JUDGEMENT ADVERSE, RLA HEREBY
AUTHORIZED TO INSTRUCT WIPHAT TO FILE BANKRUPTCY JOINTLY
IN NAME OF LIQUIDATORS UNDER SECTION II OF BANKRUPTCY ACT
AND IN NAME OF OPIC UNDER SECTION 9 OF BANKRUPTCY ACT. OPIC
PRESIDENT AUTHORIZED BANKRUPTCY ACTION BY MEMO DATED JANUARY
18, 1974. MISSION DIRECTOR, REGIONAL LEGAL ADVISOR, OR DESIGNEE
OF EITHER ALSO HEREBY AUTHORIZED TO SIGN ANY PLEADINGS IN NAME
OF OPIC NECESSARY TO INITIATE PROCEEDINGS. END LIMITES OFFICIAL
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USE. DECONTROL AFTER JUN 12, 1975. SISCO

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Message Attributes

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Disposition Approved on Date:
Disposition Authority: izenbei0
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